Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal From Order No.183 of 2004

United India Insurance Company Ltd.,
Divisional Office, through its, Branch
Manager District-Almora. .....Opp.party/Appellant.

Versus.

1. Smt.Omwati W/o late Sri Vijendra Kumar,
2. Km.Upasana D/o late Sri Viojendra Kumar,
3. Km.Sonu D/o late Sri Vijendra Kumar,
4. Master Amar Kumar S/o late Sri Vijendra Kumar,
5. Arvind Kumar S/o late Vijendra Kumar,
6. Km.Rita D/o late Sri Vijendra Kumar,
7. Game Lal S/o Sri Bvasant Lal,
8. Smt.Shanti Devi W/o Game Lal,
   All R/o Village-Papar Shaili (Shail), P.O.-
   N.T.D. Tehsil & Disltrict-Almora,
9. Sri Surendra Singh Mehta
   S/o Sri Jayman Singh Mehta, R/o Village-
   Sera Patti-Chandak, Vikas Khand Bid,
   Tehsil & District-Pithoragarh,
   (Owner of Truck No.1US-2-9309).
10. Prakash Singh Negi S/o Mohan Singh Negi,
    R/o Panchgaon Hawalbagh, District-Almora,
    (Driver-Maruti Van No. V-01-4915),
11. Narendra Singh S/o Virendra Singh,
    R/o Jakhan Devi, Almora, District-Almora.

..... Respondents.

Sri D.S.Patni, learned counsel for the appellant,
Sri Amish Tewari, learned counsel for claimants/respondents.
Sri M.K.Goel, learned counsel for respondent No.11.

Date: 23rd August, 2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the opposite party-appellant against the judgment and order dated 22.04.2004 passed by Motor Accident Claims Tribunal

/District Judge, Nainital *(hereinafter referred to as the Tribunal)* in Motor Accident Claim Case No.60/2002.

2. Brief facts giving rise to this appeal are that on 2.8.2001 at 4.45 p.m. deceased Vijendra Kumar was travelling on Maruti Van No. UP-01-4915 and was going from Haldwani to Almora. The said Maruti Van, which was driving by its driver rashly and negligently, when reached near Suyalkhet, Khairna-Almora Motor Road, truck No. US-2-9309, which was also being driven by its driver rashly and negligently, collided with the aforesaid Maruti Van due to which the Van fell into ditch. In the said accident Vijendra Singh received grievous injuries. He got admitted in Base Hospital, Almora, where he died on 4.8.2001 due to the injuries received in the said accident. It was alleged that the deceased was 36 years of age at the time of accident and was earning Rs. 4,500/- per month by supplying and selling worthless material. Both the aforesaid offending vehicles were insured with the United India Insurance Company Ltd. The claimants, who are dependents of the deceased, filed claim petition under Sec.140/166 of the Motor Vehicles Act for compensation on account of death of Vijendra Singh.

3. The learned Tribunal after recording evidence of the parties, framed all the necessary issues and allowed the petition for grant of Rs. 2,40,000/- alongwith interest at the rate of 9% per annum against the United India Insurance Company Ltd.

4. The learned counsel for the appellant-Insurance Company pressed the appeal only on quantum of compensation. He contended that the monthly income of

the deceased as Rs. 3000/- was assessed only on the basis of surmises and conjecture, while in the ration card the income of deceased was shown Rs. 10,000/- per annum which the learned Tribunal has totally ignored.

5- We have gone through the entire material on record. It may be mentioned at the out set that against the impugned order dated 22.4.2004 passed in Claim Petition No. 60 of 2002 the Opp.party-appellant United India Insurance Company Ltd. filed review petition before the learned Tribunal which was numbered as 29 of 2004. In the said review petition the learned Tribunal after hearing the parties came to the conclusion that the liability of both the vehicle is equal and one vehicle Truck No. US-2-9309 was not insured with the United India Insurance Company on the date of accident. Thus, the United India Insurance Company is liable to pay Rs. 1,20,000/- and rest of the liability shall be paid by the owner of the aforesaid offending Truck. The offending truck was insured for the period 27.8.2001 to 26.8.2002, which is clear from the certificate of insurance paper No.56-C/2 on record, while the alleged accident took place on 02.8.2001. The learned Tribunal exercising the power under Section 151 C.P.C., allowed the review application on 03.6.2004 exonerating the United India Insurance Company from its liability and held that the liability of the payment of Rs. 1,20,000/- is to be the owner of Truck No. US-2-9039.

6- In view of the aforesaid order dated 03.6.2004 allowing the review application by the Tribunal, the appeal of the Opp.party/appellant-United India Insurance Company has been rendered infructuous and is dismissed

as such. However, it is made clear that the aggrieved party may avail the appropriate remedy. Amount, if deposited by the appellant in the appeal, shall be remitted to the Motor Accident Claims Tribunal concerned within a period of two months from today.

7. The cross-objection, bearing No. 4163 of 2004 filed by the claimants/respondent Nos. 1 to 8 is accordingly disposed of.

(B.S. Verma, J.) **(P.C. Verma, J.)**

P.Singh